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|--|-------------|------------------------------|-----------------------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR         | ATTORNEY DOCKET NO.               | CONFIRMATION NO. |
| 10/088,042   | 07/11/2002  | Murray Edward Bruce Leighton | THOM-0022                         | 6575             |
| 23377 7590 02/15/2007<br>WOODCOCK WASHBURN LLP<br>CIRA CENTRE, 12TH FLOOR<br>2929 ARCH STREET<br>PHILADELPHIA, PA 19104-2891 |             |                              | EXAMINER<br>HARMON, CHRISTOPHER R |                  |
|  |             |                              | ART UNIT<br>3721                  | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE   |             | MAIL DATE                    | DELIVERY MODE                     |                  |
| 3 MONTHS   |             | 02/15/2007                   | PAPER                             |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/088,042

Applicant(s)

LEIGHTON, MURRAY EDWARD  
BRUCE

Examiner

Christopher R. Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 11 are rejected under 35 U.S.C. 103(a) as obvious over Ausnit et al. (US 6,244,021).

Ausnit et al. disclose a method and apparatus for sealing a reclosable fastener 92 to a substrate comprising presenting lengths of a fastener transversely to a substrate; locating the lengths by attaching flange/base 100, 102 portions to the substrate by heat sealing devices 104 (see figure 7); (body portions 88, 96 are free); and subsequently passing the fastener and substrate to a sealer 108; see figures 5 and 8.

Ausnit et al. do not directly disclose passing the combined portion between and displacing sealing jaws to seal the substrate to the fastener, but rather displacing a single sealing bar 108 in order to form end seals on both ends of zipper and substrate; see column 3, lines 56+. The examiner takes Official Notice that the use of sealing jaws is well known in the art for effecting seals between substrates and fasteners. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute a sealing jaw pair for the sealing bar of Ausnit et al. in order to seal the ends.

Regarding claims 3-4 it is not clear if the attaching process of Ausnit takes place simultaneously or in sequence. Note that the term "initially" is a determination of succession read in a broad context. Both sealing jaws of Ausnit close upon the materials however the "initial" contact is more likely to occur by one jaw than the other due to statistical probabilities. Note that the claim is not limited to any specific duration of time. Given the likelihood that one sealing jaw would contact the respective web before the other (however slight) the limitation of initially attaching one flange to one web is considered anticipated or in the least obvious to one of ordinary skill in the art for multiple reasons including heating a thicker base portion, positioning of the top web, etc.

3. Claims 3, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit et al. (US 6,244,021) in view of Kinigakis et al. (US 6,357,914).

Ausnit et al. does not directly disclose initially attaching a single flange to the web substrate or an engaging element with an upstanding post and heel however Kinigakis et al. teach sealing a single flange 72 to web substrates 12 and 14; see figure 10. Each engaging element 26 and 28 have upstanding posts engageable with heels of opposite element; see figure 2. It would have been obvious to one of ordinary skill in the art to substitute the flange construction of Kinigakis et al. in the invention to Ausnit et al. in order for forming a slightly modified product bag with increased integrity.

#### ***Response to Arguments***

4. Applicant's arguments with respect to all claims have been considered but are not persuasive. The body portion of the fastener is considered portions 88 and 96; see

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above. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

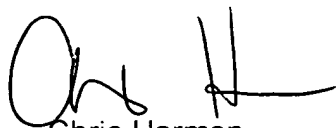
Regarding the priority document, a copy of the certified document (GB 0017307.0) has been located and entered into the file record.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Chris Harmon', with a stylized flourish extending to the right.

Chris Harmon  
Patent Examiner